December 14, 1948.

The Supreme Court of the United States,

Washington, D.C.

Subject: Oklahoma Tax Commission v. Texas Company and Magnolia Petroleum Company, Nos. 40 and 41.

Gentlemen:

The respondents seek leave to file a Rejoinder Brief, and Messrs. Mason and McCoy also seek leave to file a second Amici Curiae Brief in the above referred to cases. For reasons hereinafter set forth the petitioner opposes the filing of further briefs herein.

The petitioner respectfully submits that the cases have been fully briefed. This fact is reflected by (1) the petitioner's original brief, (2) an exhaustive Amici Curiae Brief by the Solicitor General, (3) an Answer Brief by the Texas Company, (4) an Answer Brief by the Magnolia Petroleum Company, (5) an Amici Curiae Brief by Messrs. McCoy and Hayes, and (6) a Reply Brief by the petitioner.

Respondents and Messrs. Mason and McCoy asserted in their motions filed herein for leave to file additional briefs that petitioner raised new matter in its Reply Brief. This assertion is contrary to the facts as reflected by the numerous briefs filed herein, which facts we will briefly summarize. In the Amici Curiae Brief heretofore filed herein by Messrs. Mason and McCoy, they asserted that an imposing of the taxes assessed by petitioner was prohibited under the commerce clause of the Constitution of the United States. In its Reply Brief petitioner pointed out that no commerce with Indian tribes was here shown. Messrs. Mason and McCoy have stated in the Second Amici Curiae Brief which they seek to file herein that petitioner in its Reply Brief contended that Congress was without power and authority to control and regulate the Indians involved in the cases under discussion. The petitioner neither expressly nor impliedly so contended. It realized then as does it now that the power of Congress to regulate and control Indians is not dependent upon the terms of the commerce clause of the Constitution, United States v. Sandoval, 231 U.S. 28 and United States v. Kagama, 118 U.S. 375.

The respondents urge that they are here entitled to file a Rejoinder Brief because the petitioner injected new matters into the cases in its Reply Brief; that the new matter so injected was (1) the fact that Oklahoma regulates the respondents as fully and completely as did the Federal Government and (2) that respondents had voluntarily paid the taxes here assessed for a period in excess of four years. At page 42 of the petitioner's original brief it stated that "The regulations herein imposed by the Federal Government are in substance the same as those imposed by Oklahoma on all producers of oil and gas. In fact, if they comply with the regulations imposed by Oklahoma, they automatically comply with the regulations imposed by the Federal Government." In its Answer Brief the Texas Company made no answer to this

argument, but at page 20 of its Answer Brief the Magnolia Petroleum Company did. On the same page it quoted what it contended was the preamble to the regulations of the Corporation Commission of Oklahoma. This preamble did not appear in the rules and regulations of the Corporation Commission in effect when the taxes here assessed accrued. This is one of the reasons the petitioner set forth at length in its Reply Brief the applicable rules of the Corporation Commission. Another reason is that the Magnolia Petroleum Company referred to and discussed the rules and regulations of the United States Geological Survey, which rules were not a part of the record in the Magnolia Petroleum Company case. In the Answer Brief the respondents argued that a certain refund provision of the gross production statutes of Oklahoma was so worded as to indicate that the legislature did not intend to levy a gross production tax on lessees producing under departmental leases. In answer to this contention petitioner pointed out in its Reply Brief that the respondents had placed a construction on the gross production statutes by voluntarily paying gross production taxes for more than four years, that such fact should be considered in evaluating their argument to the effect that the gross production statutes should be construed as not applying to them. We deny that the gross production statutes are ambiguous but if they are, the construction placed thereon by the petitioner and respondents for a period in excess of four years is here pertinent.

Respondents and Messrs. Mason and McCoy argue in the brief they now seek to file that Oklahoma was wholly without authority to regulate production from the lands of restricted Indians prior to 1947. The Answer to this contention is that Oklahoma did do so and that the Federal Government through the Geological Survey apparently acquiesced. In this particular, paragraphs numbered numerically 10 and 11 of the leases involved in the Texas case indicate that the Secretary of the Interior could take into consideration State laws and regulations and that the parties to the leases agreed to be bound by any unit operation when approved by the Secretary of the Interior. It is only natural to assume that the Secretary of the Interior approved the orders of the Corporation Commission referred to in petitioner's Reply Brief.

Sincerely yours,

R. F. Barry,
Attorney for Petitioner.